

PATENT  
674509-2028REMARKS

Consideration and entry of this paper and reconsideration and withdrawal of the rejections of the application are respectfully requested in view of the amendments and remarks and attachments herewith, which place the application into condition for allowance. This paper is being filed subsequent to the August 20, 2003 interview, for which Examiner Hendricks is thanked for the many courtesies therein, as well as for his patience and consideration while multiple schedules were coordinated to arrange for the interview.

**I. STATUS OF THE CLAIMS AND FORMAL MATTERS**

Claims 44-59 and 61-70 are now pending; claims 44, 50 and 55-59 have been amended, claim 70 has been added, and claim 60 has been deleted, without prejudice, without admission, without surrender of subject matter, and without any intention of creating any estoppel as to equivalents. No new matter is added.

It is submitted that the claims, as originally presented and as herein presented, are patentably distinct over the prior art cited by the Examiner, and that these claims are in full compliance with the requirements of 35 USC 112. Amendments to the claims, as presented herein, are not made for the purpose of patentability within the meaning of 35 USC sections 101, 102, 103 or 112. Rather, these amendments are made simply for clarification and to round out the scope of protection to which Applicants are entitled. Support for the amended claims is found throughout the specification and in the claims as originally presented.

**II. THE SECTION 112 REJECTIONS ARE OVERCOME**

Claims 44-69 are rejected under 35 U.S.C. §112, second paragraph as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The rejection is respectfully traversed. The previously-filed comments on the Section 112 rejections are hereby incorporated herein by reference and supplemented as follows, with the Examiner respectfully invited to review the previously-filed Amendment.

Specifically, the Office Action rejected the claims due to the phrase "consisting essentially of the steps." It is respectfully submitted that the amendments herein remove this phrase and replace it with "comprising", which was considered an acceptable alternative in the

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Office Action. Office Action at 2. Therefore, it is respectfully submitted that the rejection is moot.

Additionally, the Office Action states that it is unclear for what function the second functional ingredient is used. The Office Action agrees that the "specific type of second ingredient is a 'function of the specific recitation of the second constituent'", but states that this "still does not provide the function of any specific compound." Office Action at 3.

The claims have been amended herein to define the second functional ingredient as being one or more of the group consisting of an emulsifier, a hydrocolloid, a preservative, an antioxidant, a coloring, a flavoring and a viscosity modifier. It is respectfully submitted that such definitions inherently describe the function of the ingredient, rendering the rejection moot.

To this end, Applicants disagree with the statement in the Office Action that such "[b]roadly recited exemplary preferences of types of 'functional ingredients' do not serve to clarify the issue, nor do they serve to provide an understanding of the fundamental properties of a 'functional ingredient'." Office Action at 3. The claims have been amended herein to remove the term "functional", and by adding to the claims the limitation of the specific types of compounds which may be a functional ingredient, the function of the second ingredient is specifically set forth. One of skill in the art would recognize the function of any of an emulsifier, a hydrocolloid, a preservative, an antioxidant, a coloring, a flavoring or a viscosity modifier when used in such a foodstuff. Therefore, the amendments to the claims herein render the rejection moot.

Accordingly, reconsideration and withdrawal of the Section 112 rejections is respectfully requested.

### III. THE ART REJECTIONS ARE OVERCOME

Claims 44-53 and 60-69 were rejected under 35 U.S.C. §102(b) as allegedly anticipated by Van Den Ouwehand et al., U.S. Patent No. 5,695,802. Additionally claims 44-61 and 69 were rejected under 35 U.S.C. §102(b) as allegedly anticipated by Olesen et al., International Patent Application No. WO 94/040035. The rejections are respectfully traversed. Both of these rejections are addressed below, and the previously-filed comments on the Van Den Ouwehand document are hereby incorporated herein by reference and supplemented, as follows, with the Examiner respectfully invited to review the previous Amendment.

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Neither Van Den Ouwendal et al. or Olesen et al. disclose or suggest all the elements of the instant claims.

Specifically, claim 44 has been amended to recite that the emulsifier and the second functional ingredient are generated by alcoholysis. Basis for this amendment can be found at page 15, line 6 of the instant application. For the avoidance of doubt, enclosed for ease of reference is page 16 of the "Dictionary of Biochemistry and Molecular Biology", wherein "alcoholysis" is defined as "*the cleavage of a covalent bond of an acid derivative by reaction with an alcohol ROH so that one of the products combines with the H of the alcohol and the other product combines with the OR group of the alcohol*". In addition, "alcohol" is defined in accordance with its usual meaning as "*an alkyl compound containing a hydroxyl group*". The term "alcohol" does not encompass water, as water does not comprise an "alkyl" group. Thus, the term "alcoholysis" does not encompass hydrolysis.

Claim 44 has been amended to recite to a process for preparing a food stuff comprising an emulsifier, the process comprising (i) contacting a food material containing a fatty acid ester and a second constituent having a hydroxy group with an enzyme having esterase activity such that an emulsifier and a second ingredient are generated by alcoholysis by the enzyme from the fatty acid ester and the second constituent wherein said second functional ingredient is selected from one or more of the group consisting of an emulsifier, a hydrocolloid, a preservative, an antioxidant, a coloring, a flavoring, and a viscosity modifier, and (ii) inactivating or denaturing the enzyme to provide the foodstuff comprising the emulsifier, the fatty acid ester and the enzyme in an inactive or denatured form.

In the instant invention, the emulsifier and second ingredient are generated by alcoholysis.

In contrast, Van Den Ouwendal is instantly distinguishable from the present invention in that Van Den Ouwendal is directed to the preparation of an ingredient to be added to food, i.e., a "flavoring composition" which is prepared by hydrolysis.

Van Den Ouwendal does not teach or suggest a process for preparing a foodstuff that results in the *in situ* formation of two functional ingredients and which are generated by alcoholysis, as in the instant invention.

Accordingly, Van Den Ouwendal et al. does not teach or suggest the instant invention.

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Olesen *et al.* relates to improving properties of dough and/or baked products by addition of a lipase.

Claims 44, 50, 55-59 of the instant application relate to a process for preparing a foodstuff suitable for consumption comprising an emulsifier and these claims have been amended to recite that the foodstuff is selected from the group consisting of confectionery, frozen products, dairy products, meat products, edible oils and fats, and find foods. Basis for this amendment can be found in original claim 60 (now cancelled). These claims do not refer to baked products and/or dough.

Accordingly, Olesen *et al.* does not teach or suggest the instant invention.

Consequently, as neither Van Den Ouwendijk *et al.* nor Olesen *et al.* teach or suggest the instant invention, the rejections under 35 U.S.C. §102(b) cannot stand. Reconsideration and withdrawal of the section 102 rejections is respectfully requested.

REQUEST FOR INTERVIEW

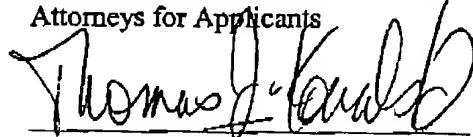
If any issue remains as an impediment to allowance, an interview with the Examiner is respectfully requested. The Examiner is respectfully requested to contact the undersigned to arrange a mutually convenient time and manner for such an interview. It is appreciated that in the Final Office Action the Examiner invited the undersigned to contact the Examiner by telephone in response to the previous request for an Interview. The undersigned and Applicants' representatives from Europe would like to schedule a convenient time and manner for the interview if entry of this paper does not result in allowance.

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In view of the remarks and amendments and attachments herewith and the amendments and remarks of record, the application is in condition for allowance. Consideration and entry of this paper, favorable reconsideration of the application and prompt issuance of a Notice of Allowance, are earnestly solicited. The undersigned looks forward to hearing favorably from the Examiner at an early date.

Respectfully submitted,

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